Supreme Court, U.S.
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No. 92-479

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1992

TXO PRODUCTION CORP.,

*Petitioner,*

—v.—

ALLIANCE RESOURCES CORP.; TUG FORK LAND COMPANY; GEORGE KING; AND GROVER C. GOODE,

*Respondents.*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

## BRIEF OF AMICUS CURIAE CHURCH OF SCIENTOLOGY OF CALIFORNIA IN SUPPORT OF PETITIONER

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TXO PRODUCTION CORP.,

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ALLIANCE RESOURCES CORP; TUG FORK LAND COMPANY; GEORGE KING; AND GROVER C. GOODE,

*Respondents*.

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On Writ of Certiorari to the
Supreme Court of Appeals of West Virginia

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# BRIEF OF AMICUS CURIAE CHURCH OF SCIENTOLOGY OF CALIFORNIA IN SUPPORT OF PETITIONER

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## INTEREST OF THE AMICUS CURIAE[1/]

As petitioner emphasized in its petition, "[t]his case presents the quintessential example of punitive damages 'run wild.' *Pacific Mutual Life Ins. Co.* v. *Haslip*, 111 S. Ct. 1032,

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[1/] The letters of consent of the parties to the filing of this brief have been filed with the Clerk of the Court.

1043 (1991)." Petition for a Writ of Certiorari of TXO Production Corp., p. 2. Like petitioner, *Amicus* has also been the victim of a runaway punitive damage award. In *Wollersheim* v. *Church of Scientology of California*, Los Angeles Superior Court No. C332827, a jury returned a verdict of $5,000,000 in compensatory and $25,000,000 in punitive damages in favor of a former Church member who sued for emotional distress allegedly arising out of his participation in the Church's peaceful and non-violent religious practices.

That verdict has been and remains the subject of ongoing appellate review on, *inter alia*, precisely the range of issues encompassed by the present case in which this *amicus* brief is filed.

First, on July 18, 1989, the California Court of Appeal found that both the compensatory and punitive damage awards were the product of passion and prejudice, and that the punitive damage award in particular was "preposterous." *Wollersheim* v. *Church of Scientology of California*, 212 Cal. App. 3d 872, 260 Cal. Rptr. 311 (Cal. App. 1989). Having so found,[2/] the Court of Appeal nevertheless refused to order a new trial, but reduced the judgment to $500,000 compensatory damages and $2,000,000 punitive damages.

Second, after the California Supreme Court denied review, this Court granted *Amicus'* petition for writ of certiorari which asserted that the award of punitive damages, even as modified, violated due process, and remanded to the

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[2/] Under California law, an appellate court may not reduce or reverse a punitive damage award on the ground that it is merely excessive, but only upon a finding that it is the product of passion and prejudice. *Adams* v. *Murakami*, 54 Cal. 3d 105, 118 n.9, 284 Cal. Rptr. 318, 813 P.2d 1348 (Cal. 1991); *Bertero* v. *National General Corp.*, 13 Cal. 3d 43, 64-65 & n.12, 118 Cal. Rptr. 184, 199-200 & n.12, 529 P.2d 608 (Cal. 1974).



California Court of Appeal for reconsideration in light of *Haslip*. *Church of Scientology of California* v. *Wollersheim*, 111 S. Ct. 1298 (1991).

Third, on remand, the California Court of Appeal reaffirmed its prior decision, holding that the California system of awarding and reviewing punitive damages does not violate due process. *Wollersheim* v. *Church of Scientology of California*, 4 Cal. App. 4th 1074, 6 Cal. Rptr. 2d 532 (Cal. App. 1992). In so holding, the Court of Appeal devoted one scant paragraph to the Church's principal argument that, in light of the finding that the jury's verdict was the product of passion and prejudice, a new trial was required on all issues.

Fourth, on July 23, 1992, the Supreme Court of California granted *Amicus'* petition for review of the new decision by the California Court of Appeal, but ordered briefing and argument of the appeal delayed pending the California Supreme Court's review of two similar punitive damage cases, *MGW Inc.* v. *Fredericks Development Corp.* (Cal. Sup. Ct. No. S015966) and *Gourley* v. *State Farm Mutual Ins. Co.* (Cal. Sup. Ct. No. S014133). *Wollersheim* v. *Church of Scientology of California*, 10 Cal. Rptr. 2d 182, 832 P.2d 898 (Cal. 1992). On December 2, 1992, however, the California Supreme Court suspended briefing and argument in the *MGW* and *Gourley* cases as well, pending this Court's decision in the instant case.

Thus, in a very real sense this Court's determination of the instant case is likely to have a direct effect upon *Amicus'* pending appeal in the California Supreme Court. But while many of the issues in the instant case are congruent with the issues in *Amicus'* pending appeal, at least one due process issue raised by *Amicus*, while of great general importance in the standards for reviewing punitive damage awards, is not likely to be raised in depth by the parties to the instant case. That issue concerns the proper disposition of a case where the

court finds that a jury's punitive damage verdict (and indeed its compensatory damage verdict) was the product of passion and prejudice. The issue indisputably is encompassed in the instant case, where the jury's punitive damage award of $10,000,000, or more than 526 times the compensatory award, clearly suggests a jury verdict "run wild" with passion and prejudice against the defendant.

## SUMMARY OF ARGUMENT

*Amicus* urges this Court to hold that due process prohibits an appellate court from merely reducing a punitive damage verdict found to be the product of passion and prejudice to a figure which an appellate court deems would have been appropriate for a non-prejudicial jury to award as punitive damages. Rather, where punitive damages have so "run wild" that they are the product of passion and prejudice, due process ordinarily requires an appellate court to order a new trial, both on damages and liability. Even were the Court not to require a new trial on all issues in such cases, at a minimum the Court should articulate standards which appellate courts should utilize in determining under what circumstances passion or prejudice infected verdicts should be reversed in their entirety, reversed in part, or reduced.

## ARGUMENT

### DUE PROCESS REQUIRES A NEW TRIAL WHERE A JURY'S PUNITIVE DAMAGE AWARD IS THE PRODUCT OF PASSION AND PREJUDICE

In cases, as here, where the punitive damage award is hundreds of times the compensatory damage award, it is at least highly suggestive of passion and prejudice. *Auster Oil &*



*Gas, Inc.* v. *Stream*, 835 F.2d 597, 603 n.5 (5th Cir.), *cert. denied*, 488 U.S. 848 (1988) ("at some point a verdict can be so excessive as to constitute a *per se* indication of prejudice and passion, and require a new trial"); *Wells* v. *Dallas Independent School District*, 793 F.2d 679, 683-84 (5th Cir. 1986) (same). In fact, the West Virginia Supreme Court of Appeal's opinion in this case invokes a standard which *invites* juries and appellate courts, in obvious violation of due process, to decide cases and impose punitive damages precisely on the basis of passion and prejudice, by applying their own subjective view of whether a defendant was "really mean" as opposed to "really stupid." *TXO Production Corp.* v. *Alliance Resources Corp.*, 419 S.E.2d 870, 888 (W.Va), *cert. granted*, ___ U.S. ___, 113 S. Ct. 594 (1992).[3/]

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3/ For example, under the *TXO* standard, a jury would be instructed that if the jury found the defendant's conduct to be merely "really stupid," it could impose punitive damages in a roughly 5:1 ratio, but that if it found the defendant's conduct to be "really mean" no such limitation applied and that even a many hundredfold disparity could be acceptable. *TXO Production Corp.* v. *Alliance Resources Corp.*, 419 S.E.2d at 889.

Though the West Virginia Supreme Court of Appeal here stated that "the punitive damages awarded in this case were not so unreasonable as to demonstrate such passion and prejudice that a new trial is warranted," *id.* at 890, this finding is clearly anchored in the court's superficial and suspect categorization permitting imposition of significantly larger punitive damage awards on "really mean" as opposed to "really stupid" defendants. The court in its discussion of passion and prejudice addressed only the single issue that the punitive damages bore a reasonable relationship to the purported net worth of the defendant, *id.*, and not whether the punitive damages bore a reasonable relationship to the acts committed or to compensatory damages. It is clear from the court's opinion that the only reason the court found the 526:1 ratio of punitive to compensatory damages to comport with due process was

(continued...)

This Court long ago made clear that a jury award which is the product of passion or prejudice must be reversed and remanded for a new trial on all issues:

> [N]o verdict can be permitted to stand which is found to be in any degree the result of appeals to passion and prejudice. Obviously such means may be quite as effective to beget a wholly wrong verdict as to produce an excessive one. A litigant gaining a verdict thereby will not be permitted the benefit of calculation, which can be little better than speculation, as to the extent of the wrong inflicted upon his opponent.

*Minneapolis, St. Paul & S.S.M. Ry. Co.* v. *Moquin*, 283 U.S. 520, 521-22 (1931).

In *Moquin*, the state Supreme Court found that a jury's damage award was the result of passion and prejudice, *Moquin*, 181 Minn. 56, 64, 231 N.W. 829, 833 (Minn. 1930), *rev'd*, 283 U.S. 520 (1931), but refused to reverse the jury's finding of liability, as "[t]he evidence is sufficient to sustain these findings." The state Supreme Court in *Moquin* thus did not order a new trial, but simply reduced the damages if plaintiff would agree to a remittitur, which plaintiff did. *Id.* at 59-60, 231 N.W. at 831. This Court reversed, holding that, once it was determined that juror passion and prejudice affected the jury's verdict, a court will not be permitted to speculate as to which parts of the verdict may have been untainted. *Moquin*, 283 U.S. at 521-22.

Thus, under *Moquin*, *no* verdict based "in any degree" upon jury passion and prejudice may stand. For example, in

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3/(...continued)
because of the court's categorization of the defendant as "really mean."



*Simeon* v. *T. Smith & Son, Inc.*, 852 F.2d 1421, 1426 (5th Cir. 1988), *cert. denied*, 490 U.S. 1106 (1989), the Fifth Circuit stated that "[w]hile mere excessiveness in the amount to be awarded may be cured by a remittitur, that excessiveness which results from passion and prejudice . . . may not be so cured. A new trial must be ordered when the verdict results from passion and prejudice." The Eighth Circuit similarly stated that "[r]emittitur is not proper if the verdict is the result of passion or prejudice because passion or prejudice may affect the decision of the jury on the issue of liability as well as damages." *Everett* v. *S.H. Parks & Associates, Inc.*, 697 F.2d 250, 253 & n.5 (8th Cir. 1983).4/

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4/ *See also Curtis Publishing Co.* v. *Butts*, 388 U.S. 130, 160 (1967) (citing *Moquin* for the "general rule that a verdict based on jury prejudice cannot be sustained *even when* punitive damages are warranted") (emphasis added); *Malandris* v. *Merrill Lynch*, 703 F.2d 1152, 1168 (10th Cir. 1981), *cert. denied*, 464 U.S. 824 (1983); *Wells* v. *Dallas Independent School District*, 793 F.2d at 683-84 (when a verdict results from prejudice and passion, remittitur is improper and a new trial is required to obtain a verdict that is not unduly influenced); *Westbrook* v. *General Tire & Rubber Co.*, 754 F.2d 1233, 1241 (5th Cir. 1985) (same); *Edwards* v. *Sears-Roebuck & Co.*, 512 F.2d 276, 281-83 (5th Cir. 1975) (same); 11 C. Wright & A. Miller, *Federal Practice and Procedure*, § 2815, at 103 (1973) ("[R]emittiturs . . . are not proper if the verdict was the result of passion and prejudice, since prejudice may have infected the decision of the jury on liability, as well as on damages. In those instances a complete new trial is required."); 6A *Moore's Federal Practice*, ¶ 59.08[7], pp. 59-197, 59-198 (1992) ("If the verdict is the result of passion or prejudice . . . the trial court *must* unconditionally order a new trial and cannot give the plaintiff the option to accept a lesser amount") (emphasis in original).

The rule is different in cases which involve merely excessive damages, in which remittiturs may be proper. *See, e.g., Linn* v. *United Plant Guard Workers*, 383 U.S. 53 (1966); *Sabella* v. *Southern Pacific Co.*, 70 Cal. 2d 311, 74 Cal. Rptr. 534, 449 P.2d 750, *cert. denied*, 395 U.S. 960 (1969).

In *Haslip*, this Court recently reiterated its adherence to the principle enunciated in *Moquin*, grounding it explicitly in due process. The Court stated that "due process imposes some limits on jury awards of punitive damages, and *it is not disputed that a jury award may not be upheld if it was the product of bias or passion*, or if it was reached in proceedings lacking the basic elements of fundamental fairness." 111 S. Ct. at 1038 (emphasis added), *quoting Browning-Ferris Industries of Vermont, Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 276 (1989). Similarly, Justice Kennedy emphasized in his concurring opinion that "*[a] verdict* returned by a biased or prejudiced jury *no doubt* violates due process. . . ." *Id.* at 1055 (Kennedy, J., concurring) (emphasis added).

In spite of the fact that this Court has made clear that a new trial on all issues is required where verdicts are infected by passion or prejudice, *see Haslip*, 111 S. Ct. at 1038, 1055; *Browning-Ferris*, 492 U.S. at 276; *Curtis Publishing Co.* v. *Butts*, 388 U.S. at 160; *Moquin*, 283 U.S. at 521-22; numerous federal and state courts have either failed to follow the *Moquin* doctrine or have explicitly rejected it. For example, the California court hearing the appeal of *Amicus* herein, on remand from this Court, explicitly stated that "*Moquin* was not announcing a rule of federal due process" and thus "*Moquin* is in no sense binding on this or any other California court." *Wollersheim* v. *Church of Scientology of California*, 4 Cal. App. 4th 1074, 6 Cal. Rptr. 2d 532, 546 (Cal. App.), *review granted*, 10 Cal. Rptr. 2d 182, 832 P.2d 898 (Cal. 1992) (after finding passion and prejudice, court refused to reverse the jury award of $5 million compensatory damages and $25 million punitive damages, and instead reduced the award to $500,000 compensatory and $2,500,000 punitive damages). In reading *Moquin* so narrowly, the California court utterly ignored this Court's more recent broad statements in *Browning-Ferris* and



*Haslip*, as well as the numerous decisions applying the *Moquin* principle broadly.

In addition, other courts, though not explicitly rejecting *Moquin*, have failed to vacate passion and prejudice infected awards and instead have simply reduced them, without any analysis of the propriety of doing so under due process. These courts often have stated only that the reduction is "to do justice," or a similar formulation, without any discussion of how the court determined that an unprejudiced jury would have found liability on the part of the defendant or awarded the reduced amount. *See, e.g., Las Palmas Associates* v. *Las Palmas Center Associates*, 235 Cal. App. 3d 1220, 1 Cal. Rptr. 2d 301, 322 (Cal. App. 1991) ($10 million punitive damage award reduced, as "any amount higher than $2 million would be the result of passion and prejudice"); *Little* v. *Stuyvesant Life Ins. Co.*, 67 Cal. App. 3d 451, 470, 136 Cal. Rptr. 653, 664 (Cal. App. 1977) (jury award infected by passion and prejudice; "justice will be best served" by reducing punitive damage award, rather than vacating it, without further explanation); *Allard* v. *Church of Scientology of California*, 58 Cal. App. 3d 439, 452-53, 129 Cal. Rptr. 797, 805-06 (Cal. App. 1976), *cert. denied*, 429 U.S. 1091 (1977) (same); *Rosener* v. *Sears, Roebuck & Co.*, 110 Cal. App. 3d 740, 753, 168 Cal. Rptr. 237, 245 (Cal. App. 1980), *app. dism'd*, 450 U.S. 1051 (1981) (same; "modify . . . to do justice"); *Goshgarian* v. *George*, 161 Cal. App. 3d 1214, 1230, 208 Cal. Rptr. 321, 331-32 (Cal. App. 1984) (same); *cf. Auster Oil & Gas, Inc.* v. *Stream*, 835 F.2d at 604 n. 6 (court held passion and prejudice infected only punitive damages and thus ordered new trial only on that issue; no discussion of standards applied, except to state "from our review of the record"); *The Post Office* v. *Portec, Inc.*, 913 F.2d 802, 811 & n. 3 (10th Cir. 1990) (court found punitive damage award caused by passion and prejudice and ordered a remittitur of punitive damages only; sole discussion as to liability and compensatory

damages was that "[w]e do not, however, conclude that the original liability determination was tainted"), *vacated as moot*, 935 F.2d 1105 (10th Cir. 1991).[5/]

The lack of explicit reasoning in these cases makes clear that, where a punitive damage award is the result of jury passion and prejudice, a disturbing number of state and federal courts have rejected, ignored or rendered meaningless this Court's *Moquin* decision, and have developed no meaningful standards to guide them in determining whether to modify the punitive damage award, to vacate the punitive damage award, or to vacate the judgment entirely.

Once a court has found that a punitive damage award is based on passion and prejudice, it is obviously improper for the court to aggregate to itself the jury's determination of whether to impose, or the amount of, punitive damages. A court certainly could not presume that a dispassionate jury would have imposed any punitive damages, because the determination whether to impose punitive damages at all is a matter wholly within the discretion of the jury and a court cannot direct the award of punitive damages. McCormick, *Damages* § 84, p. 296 (1935) ("jury . . . has entire discretion to refrain from giving any punitive damages at all even though all the elements of malicious and damaging misconduct may have been fully established"); *Brewer* v. *Second Baptist Church*, 32 Cal. 2d 791, 800-01, 197 P.2d 713 (Cal. 1948); *Haines* v. *Parra*, 193 Cal. App. 3d 1553, 1560, 239 Cal. Rptr. 178, 182 (Cal. App. 1987); B. Witkin, *Summary of California Law* § 1373, at 840 (9th ed. 1988); *cf.*, *Shu-Tao Lin* v. *McDonnell Douglas Corp*, 742 F.2d 45, 50 (2d Cir. 1984) (where prejudicial error has infected jury's

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5/ In contrast some courts adhere to the *Moquin* principle. *See, e.g., Hale* v. *Firestone Tire & Rubber Co.*, 820 F.2d 928, 936 (8th Cir. 1987).



entire consideration of compensatory damages, remittitur is improper as it "disregards the jury's verdict entirely and deprives the defendants of their right to trial by jury").[6/]

In fact, those courts which have ordered a reduction of punitive damages in passion and prejudice cases are engaging in mere speculation as to what damages an unprejudiced jury would have imposed, or even that it would have found for plaintiff. As the Fifth Circuit stated, when an award based upon passion and prejudice is reduced significantly,

> we find it difficult to regard the . . . remnant of [the] verdict as in any sense a product of the jury. It was the judge's verdict; a new trial is called for.

*Wells* v. *Dallas Independent School District*, 793 F.2d at 684 (5th Cir. 1986). "Sound public policy should preclude awards based on mere speculation. . . . There is no reason for a different standard for punitive damages." *Adams* v. *Murakami*, 54 Cal. 3d 105, 114, 284 Cal. Rptr. 318, 323-24, 813 P.2d 1348 (Cal. 1991).

Certainly, there may be some narrow exceptions to the principle enunciated in *Moquin* requiring a new trial on all issues when a verdict is based on passion and prejudice. For example, even when the verdict may have been the result of

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6/ Judicial speculation as to what an unprejudiced jury *might* have done is particularly inappropriate in cases involving unconventional groups, such as a minority religion, where heightened judicial protection is required. The Supreme Court has repeatedly warned against the dangers of hostile, impassioned juries imposing massive damages against unconventional groups and viewpoints, *see, e.g., Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 350 (1974); *Hustler Magazine, Inc.* v. *Falwell*, 485 U.S. 46, 55 (1988), and the history of public opprobrium against new, minority religions, *see Everson* v. *Board of Education*, 330 U.S. 1, 8-16 (1947), regrettably continues to this day.

passion or prejudice, a complete new trial on liability should not be required where liability is conceded or where the facts going to liability would have *required* summary judgment or a directed verdict. *See, e.g., Westbrook* v. *General Tire & Rubber Co.*, 754 F.2d at 1241-42 (where prejudicial error was directed only to damages, new trial ordered limited solely to damages); *Edwards* v. *Sears-Roebuck & Co.*, 512 F.2d at 282-83. Obviously in such situations where any non-inflamed jury would have had no choice but to find liability, the *Moquin* rationale would not apply, as the verdict on liability clearly would *not* be affected by passion and prejudice. In such an exceptional situation, it would be proper to remand for a new trial solely on compensatory and punitive damages.[7/] However, in light of the fact that the award of punitive damages is wholly within the discretion of the jury, under *Moquin* and its progeny a new trial on punitive damages is always required in verdicts based on passion and prejudice.

## CONCLUSION

*Amicus* urges the Court to hold that due process mandates that when a punitive damage award is found to be the result of passion or prejudice, a new trial on both liability and damages ordinarily is required. *Amicus* further urges the Court to

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7/ Moreover, in a situation where liability is indisputable, and in addition the compensatory damages which flow from liability are a mere matter of calculation, *e.g.*, a claim where the damages can be established as a matter of law, there would be no need for a new trial on compensatory damages. 6A *Moore's Federal Practice* ¶ 59.08[7] at pp. 59-199, 59-201 (1992). In such a case, a new trial would be required only on punitive damages.



articulate clear standards for reviewing courts to utilize in determining whether to reverse such verdicts either in their entirety or in part, or to reduce the punitive damages.

Dated: New York, New York
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Respectfully submitted,

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